

Norman C. Kleinberg  
Theodore V. H. Mayer  
William J. Beausoleil  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, New York 10004-1482  
(212) 837-6000

Paul F. Strain  
M. King Hill, III  
David J. Heubeck  
VENABLE LLP  
Two Hopkins Plaza, Suite 1800  
Baltimore, Maryland 21201  
(410) 244-7400

*Attorneys for Defendant Merck & Co., Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: FOSAMAX PRODUCTS  
LIABILITY LITIGATION

*This Document Relates to:*  
Dianne Walla v. Merck & Co., Inc., *et al.*,  
Case No. 1:07-cv-03792-JFK

MDL NO. 1789  
1:06-md-1789 (JFK)

## DECLARATION OF THEODORE V. H. MAYER

THEODORE V. H. MAYER declares as follows:

1. I am an attorney admitted to practice before this Court and a partner at Hughes Hubbard & Reed LLP, attorneys for Defendant Merck & Co., Inc. (“Merck”). I am familiar with the facts set forth herein. I make this declaration based on my own personal knowledge and the business records of the Firm.

2. I make this declaration in support of the Opposition to Plaintiff's Motion for Remand of Defendant Merck & Co., Inc.

3. A true and correct copy of the Affidavit of Walgreen's Category Manager Azra Behlim, dated April 15, 2008 is attached hereto as Exhibit A.

4. A true and correct copy of the Affidavit of K Mart Managing Claims Attorney Marcia T. Kaiser, Esq., dated April 16, 2008 is attached hereto as Exhibit B.

5. A true and correct copy of the Order Denying Plaintiff's Motion to Remand issued in *In re Phenylpropanolamine (PPA) Products Liab. Litig.*, MDL No. 1047, relating to Civ. No. C02-423R, (W.D. Wash. Nov. 27, 2002) is attached hereto as Exhibit C.

6. A true and correct copy of the decision issued in *Lyons v. Am. Tobacco Co.*, No. Civ. A. 96-0881-BH-S, 1997 WL 809677 is attached hereto as Exhibit D.

7. A true and correct copy of the decision issued in *In re Baycol Prods. Litig.*, Case No. 03-3150, 2003 WL 23305516, (D. Minn, Dec. 15, 2003) is attached hereto as Exhibit E.

8. A true and correct copy of the decision issued in *Spier v. Bayer Corp.*, No. 02-4835, 2003 WL 21223842 (D. Minn. May 27, 2003) is attached hereto as Exhibit F.

9. A true and correct copy of the Memorandum Opinion and Order issued in *Omobude v. Merck & Co., Inc.*, Civil Action No. 3:03CV528LN (S.D. Miss. Oct. 3, 2003) is attached hereto as Exhibit G.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
/s/  
Theodore V. H. Mayer

Executed this  
21<sup>th</sup> day of April, 2008